

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

<b>FREE SPEECH COALITION, INC., et al.</b>	)	<b>Civil Action No. 2:09-4607</b>
	)	
Plaintiffs,	)	<b>JUDGE MICHAEL M. BAYLSON</b>
	)	
-vs-	)	
	)	<b>PLAINTIFFS' SUPPLEMENTAL</b>
<b>THE HONORABLE JEFFERSON</b>	)	<b>SUPPORT FOR MOTION FOR ENTRY OF</b>
<b>B. SESSIONS, Attorney General,</b>	)	<b>JUDGMENT DECLARING 18 U.S.C. §§</b>
	)	<b>2257, 2257A AND THEIR</b>
Defendant.	)	<b>IMPLEMENTING REGULATIONS</b>
	)	<b>UNCONSTITUTIONAL UNDER THE</b>
	)	<b>FIRST AMENDMENT AND ENJOINING</b>
	)	<b>THEIR ENFORCEMENT</b>
	)	

Plaintiffs have advanced a number of arguments in support of their position that 18 U.S.C. §§ 2257, 2257A are unconstitutional under the First Amendment. As one of the bases in support of that position, Plaintiffs have contended that the alleged problem the statutes sought to address—the use of underage performers by producers of adult films—was non-existent because the adult industry had a longstanding practice even before 18 U.S.C. § 2257, of verifying its performers' ages by checking their photo identification documents. For this reason and others, Plaintiffs argued, the statutes are not narrowly tailored to further the Government's claimed interest, are not the least restrictive means of furthering the Government's interest in preventing the appearance of minors in sexually explicit expression, are overbroad, and therefore, unconstitutional on their face and as applied under the First Amendment.

At the September 28, 2017 hearing on the parties' respective motions to enter judgment in

their favor on Plaintiffs' First Amendment claims, the Court inquired whether the industry practice of verifying performers' ages by inspecting photo IDs had been reduced to writing, and if not, whether counsel could obtain authority to put the industry's longstanding practice in writing.

In response, the Free Speech Coalition, the trade association representing the adult industry, has formalized the industry policy and also created an easy to use form to facilitate compliance with the policy. "Free Speech Coalition Policy Governing Procedures for Verifying Ages of Performers Appearing in Sexually Explicit Expression," is attached.<sup>1</sup> Of course, all members of the Free Speech Coalition continue to comply with the requirements of 18 U.S.C. §§ 2257, 2257A since they remain in full force and effect. *See* Free Speech Coalition Press Release, "FSC Formalizes Long-Standing Age Verification Practices," attached. The written policy represents what the adult industry did before the statutes went into effect and what it would continue to do, if and when, the statutes are held to be unconstitutional.

All Plaintiffs continue to advance all of the arguments set forth in their briefs and at oral argument as to why, under strict scrutiny, the statutes are unconstitutional; as to why they are overbroad; and as to why the Court should declare the statutes unconstitutional under the First Amendment, as applied and on their face, and should permanently enjoin their enforcement. Plaintiffs also continue to adhere to the position that the Court cannot re-write the statutes to cure their unconstitutionality. *United States v. Playboy Entm't Grp., Inc.*, 529 U.S. 803, 823–24 (2000); *Puerto Rico v. Franklin California Tax-Free Tr.*, 136 S. Ct. 1938, 1949 (2016); *United States v. Stevens*, 559 U.S. 460, 481 (2010).

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<sup>1</sup> Plaintiffs provided the written standards to the Government on October 19, 2017, as requested by the Court.

Respectfully submitted,

/s/ J. Michael Murray

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**CERTIFICATE OF SERVICE**

I hereby certify that on October 27, 2017, the foregoing was filed electronically. Notice of this filing will be sent to all parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

/s/ J. Michael Murray

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